STATE OF MICHIGAN

COURT OF APPEALS

DAVID GODWIN,

Plaintiff-Appellee/Cross-Appellant,

v

SANDRA BAGGETT and WILLIE BAGGETT,

Defendants,

and

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
October 6, 2000

No. 211896
Wayne Circuit Court
LC No. 95-504250-NI

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Defendant Farm Bureau General Insurance Company of Michigan (Farm Bureau) appeals as of right from an order granting in part and denying in part its motion for summary disposition and entering judgment in its favor in the amount of $15,364.37, plus interest. Plaintiff David Godwin cross-appeals the same order granting in part and denying in part his motion for summary disposition and entering judgment in his favor in the amount of $4,635.63 plus interest. Farm Bureau argues that plaintiff, its insured, should reimburse it in the amount of $20,000 for a claim previously paid. We agree and reverse.

Plaintiff, a pedestrian, was injured in a car accident involving two drivers, only one of whom was insured. Farm Bureau, believing the uninsured driver was solely at fault, paid plaintiff $20,000 under the uninsured motorist provision of its no-fault automobile insurance policy. Before payment was made, plaintiff obtained possession of a statement by Sandra Baggett, the insured motorist, indicating that the police report prepared following the accident was erroneous. Plaintiff did not supply this information to defendant, however. Farm Bureau paid plaintiff benefits pursuant to the uninsured motorist provision of

its no-fault automobile insurance policy, and plaintiff and Farm Bureau then executed a trust agreement stating that plaintiff

> shall hold for benefit of the Beneficiary [Farm Bureau] all rights, claims and causes of action which the Trustee has or may have against any person, organization, association, or corporation, other than the Beneficiary, because of bodily injury, sickness, or disease which is the subject of the claim made against the Beneficiary.

The trust agreement further provided that

> [t]he Trustee agrees to take, *through any representative designated by the Beneficiary*, such action as may be necessary or appropriate to recover the damages suffered by the Trustee from any person, organization, association, or corporation, other than the Beneficiary, who may be legally liable therefor; such action to be taken in the name of the Trustee, the Beneficiary to pay all costs and expenses in connection therewith. It is further agreed that any moneys recovered by the Trustee, as a result of judgment, settlement, or otherwise, shall be held in trust and paid to the Beneficiary; provided, however, any sum recovered in excess of the total amount paid by the Beneficiary to the Trustee, under the terms of the above-mentioned policy, shall be retained by the Trustee for his/her own use and benefit. [Emphasis added.]

Plaintiff eventually garnered an $86,500 arbitration award from the driver of the insured car.

On appeal, Farm Bureau contends that the trial court erred in failing to order plaintiff to reimburse it the entire $20,000 sum Farm Bureau erroneously paid to him, and instead, deducting plaintiff's costs. Specifically, Farm Bureau maintains that because plaintiff did not bring his action against Baggett through an attorney designated by Farm Bureau, he is not entitled to recover costs and expenses under the trust agreement. We agree. An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). In attempting to discern the parties' contractual intent, courts must regard the language in the policy, the character of the contract, the contract's purpose, and the surrounding facts and circumstances at the time of execution. *Bosco v Bauermeister*, 456 Mich 279, 300; 571 NW2d 509 (1997).

It is the clear intent of the trust agreement that plaintiff was to hold in trust for Farm Bureau any causes of action plaintiff may have relative to the injuries for which he made his claim against Farm Bureau, and that Farm Bureau would designate an attorney for plaintiff, allowing Farm Bureau to be in a position to control the course, and expense, of any litigation. Here, where plaintiff retained counsel of its choosing, Farm Bureau was not responsible for the costs incurred.

Furthermore, under the terms of the insurance policy, plaintiff was obligated to give Farm Bureau "written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances" of his accident. We conclude that plaintiff violated the terms of the policy by failing to give defendant the statement Baggett made to

her own insurer. That statement may have alerted defendant to the possibility of recovery against Baggett as a joint tortfeasor. In any event, knowledge that the police report on which Farm Bureau relied was materially different from Baggett's version of events would be relevant to Farm Bureau's decision whether to pay benefits to plaintiff when it did. Accordingly, we reverse and find that defendant is entitled to full reimbursement of the $20,000, plus interest.

Because plaintiff is not entitled to costs and expenses under the trust agreement, we find it unnecessary to address plaintiff's counterclaim that the trial court should have interpreted "costs and expenses" to include attorney fees. We also find that the collateral source rule, MCL 600.6303; MSA 27A.6303, is not applicable. MCL 600.6303(5); MSA 27A.6303(5) states that

> benefits from a collateral source shall not be considered payable or receivable unless the court makes a determination that there is a previously *existing contractual or statutory obligation on the part of the collateral source to pay the benefits.* [Emphasis added.]

See also *Haberkorn v Chrysler Corp,* 210 Mich App 354, 376; 533 NW2d 373 (1995). Here, defendant had no obligation to pay under the uninsured motorist provision where there was an insured driver who was jointly and severally liable. Moreover, the collateral source rule required plaintiff to first send written notice by registered mail of the verdict. MCL 600.6303(3); MSA 27A.6303(3); *Rogers v City of Detroit,* 457 Mich 125, 156; 579 NW2d 840 (1998), overruled on other grounds 462 Mich 439. Plaintiff makes no showing that it complied with this requirement.

Reversed and remanded. We do not retain jurisdiction.

/s/ Jeffrey G. Collins
/s/ Donald S. Owens